



NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Humanities

45 CFR 1177

RIN 3136-AA38

Claims Collection

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Direct final rule.

SUMMARY: The National Endowment for the Humanities (NEH) is revising its Claims Collection regulation in accordance with the Debt Collection Improvement Act of 1996 (DCIA), as implemented by the Department of Justice (DOJ) and the Department of Treasury (Treasury) in the revised Federal Claims Collection Standards (FCCS). This final rule revises NEH's rules and procedures for administrative collection, offset, compromise, suspension, and termination of collection activity for civil claims for money, funds, or property. Additionally, this final rule revises the rules and procedures that NEH follows to refer civil claims to Treasury, Treasury-designated debt collection centers, or DOJ so that Treasury or DOJ may collect the civil claim through further administrative action or litigation, as applicable.

DATES: This rule is effective [INSERT 90 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] without further action, unless adverse comment is received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN *THE FEDERAL REGISTER*]. If adverse comment is received, NEH will publish a timely withdrawal of the rule in the *Federal Register*.

ADDRESSES: You may send comments by email to gencounsel@neh.gov.

Instructions: Include "Claims Collection" and RIN 3136-AA38 in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Deputy General

Counsel, Office of the General Counsel, National Endowment for the Humanities, 400 7th Street, SW, Room 4060, Washington, DC 20506; (202) 606-8322; gencounsel@neh.gov.

SUPPLEMENTARY INFORMATION:

1. Background

The original FCCS provided guidance for implementing the Debt Collection Act of 1982, Pub. L. 97–365 on a government-wide basis. NEH implemented the FCCS in 1986 in its Claims Collection regulation, set forth at 45 CFR 1177 *et seq.* As mandated by the DCIA, in 2000, DOJ and Treasury jointly promulgated the revised FCCS, set forth at 31 CFR 900–904, to reflect the DCIA’s legislative changes to federal debt collection procedures. The revised FCCS superseded the original FCCS. As a result, NEH is revising its Claims Collection regulation to conform with the DCIA and the current FCCS.

2. Basic Provisions

In accordance with the requirements of the DCIA and the revised FCCS, this rule revises NEH’s rules and procedures for the administrative collection, offset, compromise, suspension, and termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b). Additionally, this rule revises the rules and procedures that NEH will use to refer applicable civil claims to Treasury, Treasury-designated debt collection centers, or DOJ for collection by further administrative action or litigation. This rule affects NEH’s debtors, but it does not apply to claims between federal agencies.

This rule incorporates the following changes to NEH’s current Claims Collection regulation (45 CFR 1177, *et seq.*):

A. Demand Letter

One demand letter should be sufficient. The demand letter will include: (1) The applicable standards NEH follows for imposing any interest, penalties, or administrative costs; (2) NEH’s policies regarding its use of collection agencies, federal salary offset, tax refund

offset, administrative offset, and litigation; (3) any rights the debtor may have to seek review of NEH's determination of the debt and to enter into a reasonable repayment agreement; and (4) information regarding NEH's remedies to enforce payment of the debt.

B. Mutual Releases

In all appropriate instances, NEH and debtors will exchange mutual releases of non-tax liabilities when compromising a claim.

C. Increase in Amount

The principal claim amount for which NEH is authorized to compromise, suspend, or terminate collection activity—without concurrence by DOJ—will increase from \$20,000 to \$100,000. Additionally, the minimum claim amount that NEH may refer to DOJ for litigation will increase from \$600 to \$2,500.

D. Transferring or Referring Delinquent Debt

There are new procedures for transferring or referring delinquent debt to Treasury or a Treasury-designated debt collection center for debt collection.

E. Centralized Administrative Offset

There are new debt collection procedures for disbursing officials to follow when conducting mandatory centralized administrative offset.

F. Mandatory Credit Bureau Reporting

There are new debt collection procedures for mandatory credit bureau reporting.

G. Prohibition Against Federal Financial Assistance

There are new debt collection procedures prohibiting federal financial assistance, which includes grants, cooperative agreements, contracts, loans, loan guarantees, and loan insurance to debtors, unless waived by NEH's Chairperson (the "Chairperson") or the Chairperson's designee.

Executive Order 12866, Regulatory Planning and Review, and Executive Order 13563, Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

Executive Order 13771, Reducing Regulations and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12988, Civil Justice Reform

This rulemaking meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988. Specifically, this rulemaking is written in clear language designed to help reduce litigation.

Executive Order 13175, Indian Tribal Governments

Under the criteria in Executive Order 13175, NEH evaluated this rulemaking and determined that it will not have any potential effects on Federally recognized Indian Tribes.

Executive Order 12630, Takings

Under the criteria in Executive Order 12630, this rulemaking does not have significant takings implications. Therefore, a takings implication assessment is not required.

Administrative Procedure Act of 1946

NEH finds good cause to issue this regulation as a direct final rule, without prior notice and comment, because the agency views it as a noncontroversial amendment and anticipates no significant adverse comment. This rulemaking merely conforms NEH's claims collection regulation to the standards of agency practice and procedure previously jointly promulgated by DOJ and Treasury according to the DCIA. Therefore, under 5 U.S.C. 553(b)(3)(A), this rule is

not subject to the Administrative Procedure Act's requirements for a notice of proposed rulemaking.

Regulatory Flexibility Act of 1980

This rulemaking will not have a significant adverse impact on a substantial number of small entities, including small businesses, small governmental jurisdictions, or certain small not-for-profit organizations.

Paperwork Reduction Act of 1995

This rulemaking does not impose an information collection burden under the Paperwork Reduction Act. This action contains no provisions constituting a collection of information pursuant to the Paperwork Reduction Act.

Unfunded Mandates Act of 1995

This rulemaking does not contain a Federal mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year.

National Environmental Policy Act of 1969

This rulemaking will not have a significant effect on the human environment.

Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking will not be a major rule as defined in section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rulemaking will not result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

E-Government Act of 2002

All information about NEH required to be published in the *Federal Register* may be accessed at www.neh.gov. The website <https://www.regulations.gov> contains electronic dockets for NEH's rulemakings under the Administrative Procedure Act of 1946.

Plain Writing Act of 2010

To ensure this rulemaking was written in plain and clear language so that it can be used and understood by the public, NEH modeled the language of this rulemaking on the Federal Plain Language Guidelines.

List of Subjects in 45 CFR 1177

Administrative practice and procedure, Claims, Debt, Government employees, Privacy.

For the reasons set forth in the preamble, the National Endowment for the Humanities revises 45 CFR part 1177 to read as follows:

Part 1177— CLAIMS COLLECTION

Subpart A—Scope of Standards

Sec.

- 1177.1 Prescription of standards.
- 1177.2 Definitions and construction.
- 1177.3 Antitrust, fraud, and tax and interagency claims excluded.
- 1177.4 Compromise, waiver, or disposition under other statutes not precluded.
- 1177.5 Form of payment.
- 1177.6 Subdivision of claims not authorized.
- 1177.7 Required administrative proceedings.
- 1177.8 No private rights created.

Subpart B—Standards for the Administrative Collection of Claims

- 1177.9 Aggressive NEH collection activity.
- 1177.10 Demand for payment.
- 1177.11 Collection by administrative offset.
- 1177.12 Reporting debts.
- 1177.13 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.
- 1177.14 Suspension or revocation of eligibility for federal financial assistance.
- 1177.15 Liquidation of collateral.
- 1177.16 Collection in installments.
- 1177.17 Interest, penalties, and administrative costs.
- 1177.18 Analysis of costs.
- 1177.19 Use and disclosure of mailing addresses.
- 1177.20 Exemptions.

Subpart C—Standards for the Compromise of Claims

- 1177.21 Scope and application.
- 1177.22 Bases for compromise.
- 1177.23 Enforcement policy.
- 1177.24 Joint and several liability.
- 1177.25 Further review of compromise offers.
- 1177.26 Consideration of tax consequences to the Government.
- 1177.27 Mutual releases of the debtor and the Government.

Subpart D—Standards for Suspending or Terminating Collection Activity

- 1177.28 Scope and application.
- 1177.29 Suspension of collection activity.
- 1177.30 Termination of collection activity.
- 1177.31 Exception to termination.
- 1177.32 Discharge of indebtedness; reporting requirements.

Subpart E—Referrals to the Department of Justice

- 1177.33 Prompt referral.
- 1177.34 Claims Collection Litigation Report.
- 1177.35 Preservation of evidence.
- 1177.36 Minimum amount of referrals to the Department of Justice.

Authority: 31 U.S.C. 3711, 3716–3719; Pub. L. 104–134; 31 CFR 900–904.

Subpart A—Scope of Standards

§ 1177.1 Prescription of standards.

(a) The National Endowment for the Humanities (NEH) is issuing the regulation the regulations in this part pursuant to 31 CFR 900–904 and under the authority contained in 31 U.S.C. 3711(d)(2). The regulations in this part prescribe the standards that NEH will use in the administrative collection, offset, compromise, suspension, and termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b), unless specific Federal agency statutes or regulations apply to such activities or, as provided for by Title 11 of the United States Code, when the claims involve bankruptcy. Federal agencies include agencies of the executive, legislative, and judicial branches of the Government, including Government corporations. The regulations in this part also prescribe standards for referring debts to the Department of Justice (DOJ) for litigation. Additional guidance is contained in the Office of Management and Budget’s circular A-129 (Revised), “Policies for Federal Credit Programs and

Non-Tax Receivables,” the Department of the Treasury’s (Treasury) “Managing Federal Receivables,” and other publications concerning debt collection and debt management. These publications are available from the Debt Management Services, Financial Management Service, Department of the Treasury, 401 14th Street SW, Room 151, Washington, DC 20227.

(b) Additional rules governing centralized administrative offset and the transfer of delinquent debts to Treasury or Treasury-designated debt collection centers for collection (cross-servicing) under the Debt Collection Improvement Act of 1996, Pub. L. 104-134, 110 Stat. 1321, 1358 (April 26, 1996) (DCIA), are issued in separate regulations by Treasury. Rules governing the use of certain debt collection tools created under the DCIA, such as administrative wage garnishment, also are issued in separate regulations by Treasury. See generally 31 CFR 285.

(c) NEH is not limited to the remedies contained in this part and may use all authorized remedies, including alternative dispute resolution and arbitration, to collect civil claims, to the extent that such remedies are not inconsistent with the Federal Claims Collection Act, as amended, Pub. L. 89-508, 80 Stat. 308 (July 19, 1966), the Debt Collection Act of 1982, Pub. L. 97-365, 96 Stat. 1749 (October 25, 1982), the DCIA, or other relevant statutes. The regulations in this part are not intended to impair NEH’s common law rights to collect debts.

(d) Standards and policies regarding the classification of debt for accounting purposes (for example, write off of uncollectible debt) are contained in the Office of Management and Budget’s Circular A-129 (Revised), “Policies for Federal Credit Programs and Non-Tax Receivables.”

§ 1177.2 Definitions and construction.

(a) For the purposes of the standards in this part, the terms “claim” and “debt” are synonymous and interchangeable. They refer to an amount of money, funds, or property that an agency official has determined to be due the United States from any person, organization, or entity, except another Federal agency. For the purposes of administrative offset under 31 U.S.C. 3716, the terms “claim” and “debt” include an amount of money, funds, or property owed by a

person to a State (including past-due support being enforced by a State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

(b) “Chairperson” means the Chairperson of NEH or the Chairperson’s designee.

(c) A debt is “delinquent” if it has not been paid by the date specified in the initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.

(d) Words in the plural form shall include the singular and vice versa, and words signifying the masculine gender shall include the feminine and vice versa. The terms “includes” and “including” do not exclude matters not listed but do include matters that are in the same general class.

(e) “Recoupment” is a special method for adjusting debts arising under the same transaction or occurrence. For example, obligations arising under the same contract generally are subject to recoupment.

(f) Unless otherwise stated, “Secretary” means the Secretary of the Treasury or the Secretary’s delegate.

§ 1177.3 Antitrust, fraud, and tax and interagency claims excluded.

(a) The standards in this part relating to compromise, suspension, and termination of collection activity do not apply to any debt based in whole or in part on conduct that violates the antitrust laws or to any debt involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim. Only DOJ has the authority to compromise, suspend, or terminate collection activity on such claims. The standards in this part relating to the administrative collection of claims do apply, but only to the extent authorized by DOJ in a particular case. Upon identification of a claim based in whole or in part on conduct in violation of the antitrust laws or any claim involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having

an interest in the claim, NEH shall promptly refer the case to DOJ for action. At its discretion, DOJ may return the claim to NEH for further handling, in accordance with the standards in this part.

(b) This part does not apply to tax debts.

(c) This part does not apply to claims between Federal agencies. NEH will attempt to resolve interagency claims by negotiation in accordance with Executive Order 12146 (3 CFR, 1979 Comp., pp. 409–412).

§ 1177.4 Compromise, waiver, or disposition under other statutes not precluded.

Nothing in this part precludes NEH's disposition of any claim under statutes and implementing regulations other than 31 U.S.C. 37, subchapter II (Claims of the United States Government). See e.g., the Federal Medical Care Recovery Act, Pub. L. 87–693, 76 Stat. 593 (September 25, 1962) (codified at 42 U.S.C. 2651 *et seq.*), and applicable regulations, 28 CFR 43. In such cases, the laws and regulations that are specifically applicable to NEH's claims collection activities generally take precedence over this part.

§ 1177.5 Form of payment.

Debtors may pay claims in the form of money or, when a contractual basis exists, the Government may demand the return of specific property or the performance of specific services.

§ 1177.6 Subdivision of claims not authorized.

NEH will not subdivide debts in order to avoid the monetary ceiling established by 31 U.S.C. 3711(a)(2). NEH will consider a debtor's liability arising from a particular transaction or contract as a single debt in determining whether the debt is one of less than \$100,000 (excluding interest, penalties, and administrative costs) or such higher amount as the Attorney General shall from time to time prescribe for purposes of compromising, suspending, or terminating collection activity.

§ 1177.7 Required administrative proceedings.

NEH is not required to omit, foreclose, or duplicate administrative proceedings required by contract or other laws or regulations.

§ 1177.8 No private rights created.

The standards in this part do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person, nor shall NEH's failure to comply with any of the provisions of this part be available to any debtor as a defense.

Subpart B—Standards for the Administrative Collection of Claims

§ 1177.9 Aggressive NEH collection activity.

(a) NEH will aggressively collect all debts that arise out of its activities, or that are referred or transferred for collection services to NEH. NEH will promptly undertake collection activities and take follow-up action as necessary. Nothing in 31 CFR 900 through 904 requires DOJ, Treasury, or other Treasury-designated debt collection centers to duplicate collection activities previously undertaken by NEH or to perform collection activities that NEH should have undertaken.

(b) Debts that NEH refers or transfers to Treasury or Treasury-designated debt collection centers under the authority of 31 U.S.C. 3711(g) will be serviced, collected, or compromised, or the collection action will be suspended or terminated, in accordance with the statutory requirements and authorities applicable to the collection of such debts.

(c) NEH will cooperate with other agencies in debt collection activities.

(d) NEH will consider referring debts that are less than 180 days delinquent to Treasury or to Treasury-designated debt collection centers to accomplish efficient, cost effective debt collection. Treasury is a debt collection center, is authorized to designate other Federal agencies as debt collection centers based on their performance in collecting delinquent debts, and may withdraw such designations. Referrals to debt collection centers are at the discretion of, and for

a time period acceptable to, the Secretary. Referrals may be for servicing, collection, compromise, suspension, or termination of collection action.

(e) NEH will transfer to the Secretary any debt that has been delinquent for a period of 180 days or more so that the Secretary may take appropriate action to collect the debt or terminate collection action. See 31 CFR 285.12 (Transfer of Debts to Treasury for Collection).

This requirement does not apply to any debt that:

- (1) Is in litigation or foreclosure;
- (2) Will be disposed of under an approved asset sale program;
- (3) Has been referred to a private collection contractor for a period of time acceptable to the Secretary;
- (4) Is at a debt collection center for a period of time acceptable to the Secretary (see paragraph (d) of this section);
- (5) Will be collected under internal offset procedures within three years after the debt first became delinquent; or
- (6) Is exempt from this requirement based on a determination by the Secretary that exemption for a certain class of debt is in the best interests of the United States. NEH may request that the Secretary exempt specific classes of debts.

(e) Agencies operating Treasury-designated debt collection centers are authorized to charge a fee for services rendered regarding referred or transferred debts. NEH may pay the fee out of amounts it collects and may add the fee to the debt as an administrative cost (see § 1177.18).

§ 1177.10 Demand for payment.

(a) NEH will promptly make a written demand, as described in paragraph (b) of this section, upon a debtor of the United States in terms that inform the debtor of the consequences of failing to cooperate with NEH to resolve the debt. The specific content, timing, and number of demand letters will depend upon the type and amount of the debt and the debtor's response, if

any, to NEH's letters or telephone calls. Generally, one demand letter should suffice. In determining the timing of the demand letter(s), NEH will give due regard to the need to refer debts promptly to DOJ for litigation, in accordance with § 1177.33 or otherwise. When necessary to protect the Government's interest (for example, to prevent a statute of limitations from running), NEH may precede written demand by other appropriate actions under this part, including immediate referral for litigation.

(b) Demand letters will inform the debtor of:

(1) The basis for the indebtedness and the rights, if any, the debtor may have to seek review within NEH;

(2) The applicable standards for imposing any interest, penalties, or administrative costs;

(3) The date by which the debtor should make payment in order to avoid late charges (i.e. interest, penalties, and administrative costs) and enforced collection, which generally should not be more than thirty (30) days from the date that NEH mails or hand-delivers the demand letter; and

(4) The name, address, and phone number of a contact person or office within NEH.

(c) NEH will exercise care to ensure that demand letters are mailed or hand-delivered on the same day that they are dated. There is no prescribed format for demand letters. NEH will utilize demand letters and procedures that will lead to the earliest practicable determination of whether the agency can resolve the debt administratively or must refer it for litigation.

(d) NEH will include in demand letters such items as the agency's willingness to discuss alternative methods of payment; its policies with respect to the use of credit bureaus, debt collection centers, and collection agencies; its remedies to enforce payment of the debt (including assessment of interest, administrative costs and penalties, administrative garnishment, the use of collection agencies, Federal salary offset, tax refund offset, administrative offset, and litigation); the requirement that any debt delinquent for more than 180 days be transferred to

Treasury for collection; and, depending on applicable statutory authority, the debtor's entitlement to consideration of a waiver.

(e) NEH will respond promptly to communications from debtors, within thirty (30) days whenever feasible, and will advise debtors who dispute debts to furnish available evidence to support their contentions.

(f) Prior to initiating the demand process, or at any time during or after completing the demand process, if NEH determines to pursue, or is required to pursue, offset, it will follow the offset procedures in § 1177.11. The availability of funds or money for debt satisfaction by offset, and NEH's determination to pursue collection by offset, will release NEH from further compliance with paragraphs (a), (b), (c), and (d) of this section.

(g) Prior to referring a debt for litigation, NEH will advise each person it determines to be liable for the debt that, unless the agency can collect the debt administratively, it may initiate litigation. This notification will comply with Executive Order 12988 (3 CFR, 1996 Comp., pp. 157–163) and may be given as part of a demand letter under paragraph (b) of this section or in a separate document. NEH will notify DOJ that it has given this notice.

(h) When NEH learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the agency will immediately seek legal advice from its Office of the General Counsel concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless NEH determines that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases NEH will immediately stop collection activity against the debtor.

(1) After seeking legal advice, in most cases NEH will file a proof of claim with the bankruptcy court or the Trustee. NEH will refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If NEH is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) In most cases, offset is stayed by the automatic stay. However, NEH will seek legal advice from its Office of the General Counsel to determine whether it may freeze its payments to the debtor, and other agencies' payments that are available for offset, until it can obtain from the bankruptcy court relief from the automatic stay. NEH will also seek legal advice from its Office of the General Counsel to determine whether recoupment is available.

§ 1177.11 Collection by administrative offset.

(a) *Scope.* (1) The term “administrative offset” has the meaning provided in 31 U.S.C. 3701(a)(1).

(2) This section does not apply to:

(i) Debts arising under the Social Security Act, except as provided in 42 U.S.C. 404;

(ii) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c) (see 31 CFR 285.4, Federal Benefit Offset);

(iii) Debts arising under, or payments made under, the Internal Revenue Code (see 31 CFR 285.2, Tax Refund Offset) or the tariff laws of the United States;

(iv) Offsets against Federal salaries to the extent these standards are inconsistent with regulations published to implement such offsets under 5 U.S.C. 5514 and 31 U.S.C. 3716 (see 5 CFR part 550, subpart K, and 31 CFR 285.7, Federal Salary Offset);

(v) Offsets under 31 U.S.C. 3728 against a judgment that a debtor obtained against the United States;

(vi) Offsets or recoupments under common law, State law, or Federal statutes specifically prohibiting offsets or recoupments of particular types of debts; or

(vii) Offsets in the course of judicial proceedings, including bankruptcy.

(3) Unless otherwise provided for by contract or law, NEH may collect debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 by administrative offset under the common law or other applicable statutory authority.

(4) Unless otherwise provided by law, NEH will not collect a debt by administrative offset under the authority of 31 U.S.C. 3716 more than ten (10) years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the Government official or officials who were charged with the responsibility to discover and collect such debts. This limitation does not apply to debts reduced to a judgment.

(5) In bankruptcy cases, NEH will seek legal advice from its Office of the General Counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553, on pending or contemplated collections by offset.

(b) *Mandatory centralized administrative offset.* (1) NEH is required to refer past due, legally enforceable nontax debts which are over 180 days delinquent to the Secretary for collection by centralized administrative offset. NEH may also refer debts which are less than 180 days delinquent to the Secretary for this purpose. See paragraph (b)(5) of this section for debt certification requirements.

(2) The names and taxpayer identifying numbers (TINs) of debtors who owe debts which NEH referred to the Secretary as described in paragraph (b)(1) of this section will be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of Treasury, the Department of Defense, the United States Postal Service, other Government corporations, and United States disbursing officials designated by the Secretary. When a debtor's name and TIN match a payee's name and TIN and all other requirements for offset have been met, the payment will be offset to satisfy the debt.

(3) Federal disbursing officials will notify the debtor/payee in writing that an offset has occurred to satisfy, in part or in full, a past due, legally enforceable delinquent debt. The notice will include a description of the type and amount of the payment from which the offset was taken, the amount of offset that was taken, the identity of the creditor agency requesting the

offset, and a contact point within the creditor agency who will respond to questions regarding the offset.

(4) NEH will initiate offsets only after:

(i) Sending the debtor written notice of the type and amount of the debt, NEH's intention to use administrative offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(ii) Giving the debtor the opportunity:

(A) To inspect and copy NEH records related to the debt;

(B) For a review within NEH of its determination of indebtedness; and

(C) To make a written agreement to repay the debt.

(5) NEH may omit the procedures set forth in paragraph (b)(4) of this section when:

(i) The offset is in the nature of a recoupment;

(ii) The debt arises under a contract as set forth in *Cecile Industries, Inc. v. Cheney*, 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act); or

(iii) In the case of non-centralized administrative offsets conducted under paragraph (c) of this section, NEH first learns of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When NEH omits prior notice and an opportunity for review, it will give the debtor such notice and an opportunity for review as soon as practicable, and it will promptly refund any money which it ultimately finds the debtor did not owe to the Government.

(6) When an agency has previously given a debtor any of the required notice and review opportunities with respect to a particular debt (see e.g., § 1177.10), NEH need not duplicate such notice and review opportunities before initiating administrative offset.

(7) When referring delinquent debts to the Secretary, NEH will certify, in a form acceptable to the Secretary, that:

(i) The debt(s) is (are) past due and legally enforceable; and

(ii) NEH has complied with all due process requirements under 31 U.S.C. 3716(a) and paragraphs (b)(4), (b)(5), and (b)(6) of this section.

(8) Payments that are prohibited by law from being offset are exempt from centralized administrative offset. The Secretary will exempt payments under means-tested programs from centralized administrative offset when the head of the payment certifying or authorizing agency requests in writing that the Secretary do so. Also, the Secretary may exempt other classes of payments from centralized offset upon the head of the payment certifying or authorizing agency's written request.

(9) NEH may offset benefit payments made under the Social Security Act (42 U.S.C. 301, *et seq.*), part B of the Black Lung Benefits Act (30 U.S.C. 921, *et seq.*), and any law administered by the Railroad Retirement Board (other than tier two (2) benefits), only in accordance with Treasury regulations, issued in consultation with the Social Security Administration, the Railroad Retirement Board, and the Office of Management and Budget. See 31 CFR 285.4.

(10) In accordance with 31 U.S.C. 3716(f), the Secretary may waive the Computer Matching and Privacy Protection Act of 1988's provisions concerning matching agreements and post-match notification and verification (5 U.S.C. 552a(o) and (p)) for centralized administrative offset upon receipt of a certification from NEH, as the creditor agency, that it has met the due process requirements enumerated in 31 U.S.C. 3716(a). NEH's certification in accordance with paragraph (b)(7) of this section will satisfy this requirement. If the Secretary grants such a waiver, only Treasury's Data Integrity Board is required to oversee any matching activities, in accordance with 31 U.S.C. 3716(g). This waiver authority does not apply to offsets conducted under paragraphs (c) and (d) of this section.

(c) *Non-centralized administrative offset.* (1) Generally, NEH will conduct non-centralized administrative offsets at its discretion on an ad hoc case-by-case basis, internally or in cooperation with the agency certifying or authorizing payments to the debtor. Unless otherwise prohibited by law, when centralized administrative offset is not available or appropriate, NEH may collect past due, legally enforceable non-tax delinquent debts through non-centralized administrative offset. In these cases, a creditor agency may make a request directly to a payment authorizing agency to offset a payment due a debtor in order to collect a delinquent debt. For example, it may be appropriate for a creditor agency to request that the Office of Personnel Management (OPM) offset a Federal employee's lump sum payment upon leaving Government service in order to satisfy an unpaid advance.

(2) Before requesting that a payment authorizing agency conduct a non-centralized administrative offset, NEH will provide:

(i) The debtor with due process as set forth in paragraphs (b)(4) through (6) of this section; and

(ii) The payment authorizing agency with written certification that the debtor owes past due, legally enforceable delinquent debt in the amount stated, and that NEH has fully complied with its regulations concerning administrative offset.

(3) Payment authorizing agencies will comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to the authorizing agency's program, or would otherwise be contrary to law. NEH will make appropriate use of other agencies' cooperative efforts in effecting collection by administrative offset.

(4) When collecting multiple debts by non-centralized administrative offset, NEH will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the specific case, particularly the applicable statute of limitations.

(d) *Requests to OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund.* Upon providing OPM written certification that a debtor has been afforded the procedures provided in paragraphs (b)(4) through (6) of this section, NEH may request that OPM offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801–831.1808. Upon receipt of such a request, OPM will identify and “flag” a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund. This will satisfy any requirement that NEH initiate offset prior to the expiration of the time limitations referenced in paragraph (a)(4) of this section.

(e) *Review Requirements.* (1) For purposes of this section, whenever NEH is required to afford a debtor a review, it will provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and NEH determines that the question of indebtedness cannot be resolved by reviewing the documentary evidence; for example, when the validity of the debt turns on an issue of credibility or veracity.

(2) Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although NEH will carefully document all significant matters discussed at the hearing.

(3) This section does not require an oral hearing with respect to debt collection systems in which a determination of indebtedness rarely involves issues of credibility or veracity and NEH has determined that the review of the written record is ordinarily an adequate means to correct prior mistakes.

(4) In those cases when an oral hearing is not required by this section, NEH will accord the debtor a “paper hearing;” that is, a determination of the request for reconsideration based upon a review of the written record.

§ 1177.12 Reporting debts.

(a) NEH procedures for reporting delinquent debts to credit bureaus and other automated databases will comply with the Bankruptcy Code and the Privacy Act of 1974, 5 U.S.C. 552a, as amended. The provisions of the Privacy Act do not apply to credit bureaus.

(b) NEH procedures for reporting delinquent consumer debts to credit bureaus will be consistent with the due process and other requirements contained in 31 U.S.C. 3711(e). When an agency has given a debtor any of the required notice and review opportunities with respect to a particular debt, NEH need not duplicate such notice and review opportunities before reporting that delinquent consumer debt to credit bureaus.

(c) NEH will report delinquent debts to the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS). NEH will contact the Director of Information Resources Management Policy and Management Division, Office of Information Technology, Department of Housing and Urban Development, 451 7th Street, SW, Washington DC 20410 for information about the CAIVRS program.

§ 1177.13 Contracting with private collection contractors and with entities that locate and recover unclaimed assets.

(a) Subject to the provisions of paragraph (b) of this section, NEH may contract with private collection contractors, as defined in 31 U.S.C. 3701(f), to recover delinquent debts, provided that:

(1) NEH retains the authority to resolve disputes, compromise debts, suspend or terminate collection activity, and refer debts for litigation;

(2) The private collection contractor is not allowed to offer the debtor, as an incentive for payment, the opportunity to pay the debt less the private collection contractor's fee unless NEH has granted such authority prior to the offer;

(3) The contract provides that the private collection contractor is subject to the Privacy Act of 1974, to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and state laws

and regulations pertaining to debt collection practices, including but not limited to the Fair Debt Collection Practices Act, 15 U.S.C. 1692; and

(4) The private collection contractor is required to account for all amounts collected.

(b) NEH will use government-wide debt collection contracts to obtain debt collection services provided by private contractors. However, NEH may refer debts to private collection contractors pursuant to a contract with the private collection contractor only if such debts are not subject to the requirement to transfer debts to Treasury for collection. See 31 U.S.C. 3711(g); 31 CFR 285.12(e).

(c) NEH may fund private collection contractor contracts in accordance with 31 U.S.C. 3718(d), or as otherwise permitted by law.

(d) NEH may enter into contracts for locating and recovering United States assets, such as unclaimed assets. NEH will establish procedures that are acceptable to the Secretary before entering into contracts to recover United States assets held by a state government or a financial institution.

(e) NEH may enter into contracts for debtor asset and income search reports. In accordance with 31 U.S.C. 3718(d), such contracts may provide that the fee a contractor charges NEH for such services may be payable from the amounts recovered, unless otherwise prohibited by statute.

§ 1177.14 Suspension or revocation of eligibility for federal financial assistance.

(a) Unless waived by the Chairperson (or the Chairperson's designee), NEH will not extend financial assistance, which includes grants, cooperative agreements, contracts, loans, loan guarantees, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency. NEH may extend credit after the delinquency has been resolved. The Secretary may exempt classes of debts from this prohibition and has prescribed standards defining when a "delinquency" is "resolved" for purposes of this prohibition. See 31 CFR 285.13 (Barring Delinquent Debtors from Obtaining Federal Loans or Loan Insurance or Guarantees).

(b) In non-bankruptcy cases, when NEH is seeking the collection of statutory penalties, forfeitures, or other types of claims, it will consider suspending or revoking a debtor's licenses, permits, grants, cooperative agreements, contracts, or other privileges for inexcusable or willful failure to pay such a debt in accordance with NEH's regulations or governing procedures. In its written demand for payment, NEH will advise the debtor of the agency's ability to suspend or revoke licenses, permits, grants, cooperative agreements, contracts, or other privileges. In instances where NEH is making, guaranteeing, insuring, acquiring, or participating in grants, cooperative agreements, contracts, or loans, it will consider suspending or disqualifying any lender, contractor, grantee, partner, counterparty, broker, or participant from doing further business with NEH or engaging in programs, agreements, or activities that are sponsored, co-sponsored or otherwise supported by NEH if such lender, contractor, grantee, partner, counterparty, broker, or participant fails to pay its debts to the Government within a reasonable time or if such lender, contractor, grantee, partner, counterparty, broker, or participant has been suspended, debarred, or disqualified from participation in a program, agreement, or activity by another Federal agency. NEH will report to Treasury the failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305. The Treasury will forward to all interested agencies a notification that a surety's certificate of authority to do business with the Government has been revoked by Treasury.

(c) NEH will also extend the suspension or revocation of licenses, permits, grants, cooperative agreements, contracts, or other privileges to Federal programs, agreements, or activities that are administered by the states or other third parties on behalf of the Federal Government, to the extent that they affect the Federal Government's ability to collect money or funds owed by debtors. Therefore, states or other third parties that manage Federal programs, agreements, or activities, pursuant to NEH approval, should ensure that appropriate steps are taken to safeguard against issuing licenses, permits, grants, cooperative agreements, contracts, or other privileges to debtors who fail to pay their debts to the Federal Government.

(d) In bankruptcy cases, before advising the debtor of its intention to suspend or revoke licenses, permits, grants, cooperative agreements, contracts, or other privileges, NEH will seek legal advice from its Office of the General Counsel concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

§ 1177.15 Liquidation of collateral.

(a) NEH will liquidate security or collateral through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, and apply the proceeds to the applicable debt(s), if the debtor fails to pay the debt(s) within a reasonable time after demand and if such action is in the best interest of the United States. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor unless such action is expressly required by statute or contract.

(b) When NEH learns that a bankruptcy petition has been filed with respect to a debtor, the agency will seek legal advice from its Office of the General Counsel concerning the impact of the Bankruptcy Code, including but not limited to 11 U.S.C. 362, to determine the applicability of the automatic stay and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

§ 1177.16 Collection in installments.

(a) Whenever feasible, NEH will collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, NEH may accept payment in regular installments. NEH will obtain financial statements from debtors who represent that they are unable to pay in one lump sum and independently verify such representations whenever possible (see § 1177.22(g) of this part). If NEH agrees to accept payments in regular installments, it will obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement and that contains a provision accelerating the debt in the event of default.

(b) The size and frequency of installment payments will bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in three years or less.

(c) NEH will obtain security for deferred payments, in appropriate cases. NEH may accept installment payments notwithstanding the debtor's refusal to execute a written agreement or to give security, at the agency's option.

§ 1177.17 Interest, penalties, and administrative costs.

(a) Except as provided in paragraphs (g), (h), and (i) of this section, NEH will charge interest, penalties, and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. NEH will mail or hand-deliver a written notice to the debtor, at the debtor's most recent address available to NEH, explaining the agency's requirements concerning these charges, except where these requirements are included in a contractual or repayment agreement. These charges shall continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.

(b) NEH will charge interest on debts owed the United States as follows:

(1) Interest will accrue from the date of delinquency, or as otherwise provided by law.

(2) Unless otherwise established in a grant, cooperative agreement, contract, repayment agreement, or by statute, the rate of interest that NEH charges will be the rate that the Secretary establishes annually in accordance with 31 U.S.C. 3717. Pursuant to 31 U.S.C. 3717, NEH may charge a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the rights of the United States. NEH will document the reason(s) for its determination that the higher rate is necessary.

(3) The rate of interest that NEH initially charges will remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and seeks to enter into a new agreement, NEH may require payment of interest at a new rate that reflects the Treasury's value of funds at the time the new agreement is executed. NEH will not compound interest; that is, it

will not charge interest on interest, penalties, or administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, NEH will add to the principal under the new repayment agreement any charges that accrued but which NEH did not collect under the defaulted agreement.

(c) NEH will assess administrative costs it incurred for processing and handling delinquent debts. NEH will base its calculation of administrative costs on the actual costs it incurred or upon its estimated costs.

(d) Unless otherwise established in a contract, repayment agreement, or by statute, NEH will charge a penalty, pursuant to 31 U.S.C. 3717(e)(2), not to exceed six (6) percent a year on the amount due on a debt that is delinquent for more than ninety (90) days. This charge shall accrue from the date of delinquency.

(e) NEH may increase an “administrative debt” by the cost-of-living adjustment in lieu of charging interest and penalties under this section. “Administrative debt” includes but is not limited to a debt based on fines, penalties, and overpayments, but does not include a debt based on the extension of Government credit, such as those arising from loans and loan guaranties. The cost-of-living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted. NEH will annually compute increases to administrative debts. NEH will use this alternative only when there is a legitimate reason to do so, such as when calculating interest and penalties on a debt would be extremely difficult because of the debt’s age.

(f) When a debtor pays a debt in partial or installment payments, the Government will first apply the amount it receives to any contingency fees added to the debt, second to outstanding penalties, third to administrative costs other than contingency fees, fourth to interest, and last to principal. For purposes of this paragraph (f), “contingency fees” are administrative costs resulting from fees paid by a Federal agency to other Federal agencies or private collection

contractors for collection services rendered when the fees are paid from the amounts collected from a debtor.

(g) NEH will waive the collection of interest and administrative costs imposed pursuant to this section on the portion of the debt that the debtor pays within thirty (30) days after the date on which interest began to accrue. NEH may extend this thirty-day period on a case-by-case basis. In addition, NEH may waive interest, penalties, and administrative costs charged under this section, in whole or in part, without regard to the amount of the debt, either under the criteria set forth in these standards for the compromise of debts, or if NEH determines that collection of these charges is against equity and good conscience or is not in the best interest of the United States.

(h) NEH will not suspend the assessment of interest, penalties, and administrative costs during the administrative review of a debt, except for periods during which it has suspended collection activity under § 1177.29 of this part.

(i) NEH is authorized to impose interest and related charges on debts not subject to 31 U.S.C. 3717, in accordance with the common law.

§ 1177.18 Analysis of costs.

NEH will periodically compare costs incurred and amounts collected. NEH will use data on costs and corresponding recovery rates for debts of different types and in various dollar ranges to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating compromise offers, and establish minimum debt amounts below which collection efforts need not be taken.

§ 1177.19 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this part or other authority, NEH may send a request to the Secretary to obtain a debtor's mailing address from the Internal Revenue Service's records.

(b) NEH is authorized to use mailing addresses it obtained under paragraph (a) of this section to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

§ 1177.20 Exemptions.

(a) The preceding sections of this part, to the extent that they reflect remedies or procedures prescribed by the Debt Collection Act of 1982 and the DCIA, such as administrative offset, use of credit bureaus, contracting for collection agencies, and interest and related charges, do not apply to debts arising under, or payments made under, the Internal Revenue Code of 1986, as amended (26 U.S.C. 1, *et seq.*); the Social Security Act (42 U.S.C. 301, *et seq.*), except to the extent provided under 42 U.S.C. 404 and 31 U.S.C. 3716©; or the tariff laws of the United States. These remedies and procedures, however, may be authorized with respect to debts that are exempt from the Debt Collection Act of 1982 and the DCIA, to the extent that they are authorized under some other statute or the common law.

(b) NEH does not construe this section as prohibiting its use of these authorities or requirements when collecting debts owed by persons employed by agencies administering the laws cited in paragraph (a) of this section, unless the debt arose under those laws.

Subpart C—Standards for the Compromise of Claims

§ 1177.21 Scope and application.

(a) The standards set forth in this subpart apply to the compromise of debts pursuant to 31 U.S.C. 3711. NEH may exercise such compromise authority for debts that arise out of its activities, or that are referred or transferred to it for collection services, when the amount of the debt then due, exclusive of interest, penalties, and administrative costs, does not exceed \$100,000 or any higher amount authorized by the Attorney General. The Chairperson may designate officials within NEH to exercise the authorities in this section.

(b) Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds \$100,000 or any higher amount authorized

by the Attorney General, the authority to accept the compromise rests with DOJ. NEH will evaluate the compromise offer, using the factors set forth in this subpart. If NEH finds that an offer to compromise a debt in excess of \$100,000 is acceptable, it will refer the debt to the Civil Division or other appropriate litigating division in DOJ using a Claims Collection Litigation Report (CCLR). NEH may obtain the CCLR from DOJ's National Central Intake Facility. The referral will include appropriate financial information and a recommendation for the acceptance of the compromise offer. DOJ approval is not required if NEH rejects a compromise offer.

§ 1177.22 Bases for compromise.

(a) NEH may compromise a debt if the Government cannot collect the full amount because:

(1) The debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information;

(2) The Government is unable to collect the debt in full by enforced collection proceedings within a reasonable time;

(3) The cost of collecting the debt does not justify the enforced collection of the full amount; or

(4) There is significant doubt concerning the Government's ability to prove its case in court.

(b) NEH will consider the following relevant factors when determining the debtor's inability to pay:

(1) The debtor's age and health;

(2) The debtor's present and potential income;

(3) The debtor's inheritance prospects;

(4) The possibility that the debtor has concealed or improperly transferred assets; and

(5) The availability of assets or income that may be realized by enforced collection proceedings.

(c) NEH will verify the debtor's claim of inability to pay by using a credit report and other financial information as provided in paragraph (g) of this section. NEH will consider the applicable exemptions available to the debtor under state and Federal law in determining the Government's ability to enforce collection. NEH also may consider uncertainty as to the price that collateral or other property will bring at a forced sale in determining the Government's ability to enforce collection. A compromise that NEH effects under this section will be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to the exemptions available to the debtor and the time that collection will take.

(d) If there is significant doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or because of a bona fide dispute as to the facts, then the amount that NEH accepts in compromise of such cases should fairly reflect the probabilities of successful prosecution to judgment, with due regard given to the availability of witnesses and other evidentiary support for the Government's claim. In determining the litigative risks involved, NEH will consider the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. 2412, that may be imposed against the Government if it is unsuccessful in litigation.

(e) NEH may compromise a debt if the cost of collecting the debt does not justify the enforced collection of the full amount. The amount NEH accepts in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, with consideration given to the time it will take to effect collection. Collection costs may be a substantial factor in the settlement of small debts. In determining whether the cost of collecting justifies enforced collection of the full amount, NEH will consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principle, such as the Government's willingness to pursue aggressively defaulting and uncooperative debtors.

(f) NEH generally will not accept compromises payable in installments. This is not an advantageous form of compromise in terms of time and administrative expense. If, however, payment of a compromise in installments is necessary, NEH will obtain a legally enforceable written agreement providing that, in the event of default, the debtor's full original principal balance prior to compromise, less sums paid thereon, will be reinstated. Whenever possible, NEH also will obtain security for repayment in the manner set forth in subpart B of this part.

(g) To assess the merits of a compromise offer based in whole or in part on the debtor's inability to pay the full amount of a debt within a reasonable time, NEH will obtain a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income, and expenses. NEH also may obtain credit reports or other financial information to assess compromise offers. NEH may use its own financial information form or may request suitable forms from DOJ or the local United States Attorney's Office.

§ 1177.23 Enforcement policy.

Pursuant to this subpart, NEH may compromise statutory penalties, forfeitures, or claims that it established as an aid to enforcement and to compel compliance, if NEH's enforcement policy in terms of deterrence and securing compliance, present and future, will be adequately served by the agency's acceptance of the compromise offer.

§ 1177.24 Joint and several liability.

a. When two or more debtors are jointly and severally liable, NEH will pursue collection activity against all debtors, as appropriate. NEH will not attempt to allocate the burden of payment between the debtors but will proceed to liquidate the indebtedness as quickly as possible.

b. NEH will ensure that a compromise agreement with one debtor does not release the agency's claim against the remaining debtors. The amount of a compromise with one debtor will not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim.

§ 1177.25 Further review of compromise offers.

If NEH is uncertain whether to accept a firm, written, substantive compromise offer on a debt that is within the agency's delegated compromise authority, it may refer the offer to the Civil Division or other appropriate litigating division in DOJ, using a CCLR accompanied by supporting data and particulars concerning the debt. DOJ may act upon such an offer or return it to NEH with instructions or advice.

§ 1177.26 Consideration of tax consequences to the Government.

In negotiating a compromise, NEH will consider the tax consequences to the Government. In particular, NEH will consider requiring a waiver of the debtor's tax-loss-carry-forward and tax-loss-carry-back rights. For information on discharge of indebtedness reporting requirements, see § 1177.32.

§ 1177.27 Mutual releases of the debtor and the Government.

In all appropriate instances, NEH will implement acceptable compromises by means of a mutual release, in which the debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromise amount and the Government and its officials, past and present, are released and discharged from any and all of the debtor's claims and causes of action arising from the same transaction. In the event NEH does not execute a mutual release when it compromises a debt, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against the Government and its officials related to the transaction that gave rise to the compromised debt.

Subpart D—Standards for Suspending or Terminating Collection Activity

§ 1177.28 Scope and application.

(a) The standards set forth in this subpart apply to the suspension or termination of collection activity, pursuant to 31 U.S.C. 3711, on debts that do not exceed \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. Prior

to referring a debt to DOJ for litigation, NEH may suspend or terminate collection under this subpart with respect to debts that arise out of its activities, or that are referred or transferred to it for collection services.

(b) If, after deducting the amount of any partial payments or collections, the principal amount of a debt exceeds \$100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with DOJ. If NEH believes that suspension or termination of any debt in excess of \$100,000 may be appropriate, it will refer the debt to the Civil Division or other appropriate litigating division in DOJ, using the CCLR. The referral will specify the reasons for NEH's recommendation. If, prior to referral to the DOJ, NEH determines that a debt is plainly erroneous or clearly without legal merit, NEH may terminate collection activity without obtaining DOJ concurrence, regardless of the amount involved.

§ 1177.29 Suspension of collection activity.

(a) NEH may suspend collection activity on a debt when:

- (1) NEH cannot locate the debtor;
- (2) NEH expects the debtor's financial condition to improve; or
- (3) The debtor has requested a waiver or review of the debt.

(b) NEH may suspend collection activity on a debt when, based on the debtor's current financial condition, the debtor's future prospects justify retention of the debt for periodic review and collection activity and:

- (1) The applicable statute of limitations has not expired; or
- (2) Future collection can be effected by administrative offset, notwithstanding the expiration of the applicable statute of limitations for litigation of claims, with due regard to the ten-year limitation for administrative offset prescribed by 31 U.S.C. 3716(e)(1); or

(3) The debtor agrees to pay interest on the amount of the debt on which collection will be suspended, and such suspension is likely to enhance the debtor's ability to pay the full amount of the debt with interest at a later date.

(c)(1) NEH will suspend collection activity during the time required to consider the debtor's request for waiver or administrative review of the debt, if the statute under which the debtor makes the request prohibits NEH from collecting the debt during that time.

(2) If the statute under which the debtor makes the request does not prohibit collection activity pending consideration of the debtor's request, NEH may use discretion, on a case-by-case basis, to suspend collection. Further, NEH ordinarily will suspend collection action upon a request for waiver or review if a statute or regulation prohibits NEH from issuing a refund of amounts it collected prior to considering the debtor's request. However, NEH should not suspend collection when it determines that the request for waiver or review is frivolous or was made primarily to delay collection.

(d) If NEH learns that a bankruptcy petition has been filed with respect to a debtor, in most cases it must suspend the collection activity on that debtor's debt, pursuant to the provisions of 11 U.S.C. 362, 1201, and 1301, unless NEH can clearly establish that the automatic stay has been lifted or is no longer in effect. NEH will immediately seek legal advice from its Office of the General Counsel and, if legally permitted, take the necessary legal steps to ensure that the agency does not pay any funds or money to the debtor until it obtains relief from the automatic stay.

§ 1177.30 Termination of collection activity.

(a) NEH may terminate collection activity when:

(1) NEH is unable to collect any substantial amount through its own efforts or through the efforts of others;

(2) NEH is unable to locate the debtor;

(3) NEH anticipates that the costs of collection will exceed the amount recoverable;

(4) The debt is legally without merit or enforcement of the debt is barred by any applicable statute of limitations;

(5) NEH cannot substantiate the debt; or

(6) The debt against the debtor has been discharged in bankruptcy.

(b) Before terminating collection activity, NEH will have pursued all appropriate means of collection and determined, based upon the results of the collection activity, that the debt is uncollectible. Terminating collection activity ceases active collection of the debt but does not preclude NEH from retaining a record of the account for purposes of:

(1) Selling the debt, if the Secretary determines that such sale is in the best interests of the United States;

(2) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

(3) Offsetting against future income or assets not available at the time the agency terminated collection activity; or

(4) Screening future applicants for prior indebtedness.

(c) Generally, NEH will terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. NEH may continue collection activity, however, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization. Offset and recoupment rights may survive the discharge of the debtor in bankruptcy and, under some circumstances, claims also may survive the discharge. For example, if NEH is a known creditor of the debtor, its claims may survive a discharge if it did not receive formal notice of the proceedings. NEH will seek legal advice from its Office of the General Counsel if it believes it has claims or offsets that may survive the discharge of a debtor.

§ 1177.31 Exception to termination.

When a significant enforcement policy is involved, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, NEH may refer debts for litigation even though termination of collection activity may otherwise be appropriate.

§ 1177.32 Discharge of indebtedness; reporting requirements.

(a) Before discharging a delinquent debt (also referred to as a close out of the debt), NEH will take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g), including, as applicable, administrative offset; tax refund offset; Federal salary offset; referral to Treasury, Treasury-designated debt collection centers, or private collection contractors; credit bureau reporting; wage garnishment; litigation; and foreclosure. Discharge of indebtedness is distinct from termination or suspension of collection activity under this subpart and is governed by the Internal Revenue Code. When NEH suspends or terminates collection action on a debt, the debt remains delinquent and NEH may pursue further collection action at a later date, in accordance with the standards set forth in this part. When NEH discharges a debt in full or in part, further collection action is prohibited. Therefore, NEH will make the determination that collection action is no longer warranted before discharging a debt. NEH must also terminate debt collection action before discharging a debt.

(b) Section 3711(i), title 31, United States Code, requires NEH to sell a delinquent nontax debt upon termination of collection action if the Secretary determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action (including the sale of a delinquent debt), NEH may not discharge a debt until it meets the requirements of 31 U.S.C. 3711(i).

(c) Upon discharge of an indebtedness, NEH must report the discharge to the IRS in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P-1. NEH may request Treasury or Treasury-designated debt collection centers to file such a discharge report to the IRS on NEH's behalf.

(d) When discharging a debt, NEH must request that litigation counsel release any liens of record securing the debt.

Subpart E—Referrals to the Department of Justice

§ 1177.33 Prompt referral.

(a) NEH will promptly refer to DOJ for litigation any debts on which it has taken aggressive collection activity in accordance with subpart B of this part and that it cannot compromise, or on which it cannot suspend or terminate collection activity, in accordance with subparts C and D of this part. NEH may refer those debts arising out of its activities, or that were referred or transferred to it for collection services. NEH will refer debts for which the principal amount is over \$1,000,000, or such other amount as the Attorney General may direct, exclusive of interest and penalties, to the Civil Division or other division responsible for litigating such debts at DOJ, Washington, DC. NEH will refer debts for which the principal amount is \$1,000,000 or less, or such other amount as the Attorney General may direct, exclusive of interest or penalties, to DOJ's Nationwide Central Intake Facility as required by the CCLR instructions. NEH will refer debts as early as possible, consistent with aggressive agency collection activity and the standards contained in this part, and, in any event, well within the period for initiating timely lawsuits against the debtors. NEH will make every effort to refer delinquent debts to DOJ for litigation within one year of the date that such debts last became delinquent.

(b) DOJ has exclusive jurisdiction over the debts NEH refers to it, pursuant to this section. As the referring agency, NEH will immediately terminate its administrative debt collection activities at the time it refers the debt to the DOJ. NEH will advise DOJ of the collection activities it has utilized to date, and their result. NEH will refrain from having any contact with the debtor and shall direct all debtor inquiries concerning the debt to DOJ. NEH will immediately notify DOJ of any payments it credited to the debtor's account after it referred

a debt under this section. DOJ will notify NEH, in a timely manner, of any payments it receives from the debtor.

§ 1177.34 Claims Collection Litigation Report.

(a) Unless excepted by DOJ, NEH will complete the CCLR (see § 1177.21(b)), accompanied by a signed Certificate of Indebtedness, to refer all administratively uncollectible claims to DOJ for litigation. As a referring agency, NEH will complete all sections of the CCLR that are appropriate to each claim, as required by the CCLR instructions, and furnish such other information as may be required in specific cases.

(b) NEH will indicate clearly on the CCLR the actions it wishes DOJ to take with respect to the referred claim. The CCLR permits NEH to indicate specifically any of a number of litigative activities which DOJ may pursue, including enforced collection, judgment lien only, renew judgment lien only, renew judgment lien and enforce collection, program enforcement, foreclosure only, and foreclosure and efficiency judgment.

(c) NEH also will use the CCLR to refer claims to DOJ to obtain approval of any proposals to compromise the claims or to suspend or terminate NEH collection activity.

§ 1177.35 Preservation of evidence.

When NEH refers claims to DOJ, it will take care to preserve all files and records that DOJ may need to prove its claims in court. NEH ordinarily will include certified copies of the documents that form the basis for its claims in the packages it creates to refer its claims to DOJ for litigation. NEH will provide originals of such documents immediately upon DOJ's request.

§ 1177.36 Minimum amount of referrals to the Department of Justice.

(a) NEH will not refer to DOJ for litigation any claims of less than \$2,500, exclusive of interest, penalties, and administrative costs, or such other amount as the Attorney General shall from time to time prescribe. DOJ will promptly notify NEH if the Attorney General changes this minimum amount.

(b) NEH will not refer claims of less than the minimum amount unless:

(1) Litigation to collect such smaller claims is important to ensure compliance with NEH's policies or programs;

(2) NEH is referring the claim solely for the purpose of securing a judgment against the debtor, which will be filed as a lien against the debtor's property pursuant to 28 U.S.C. 3201 and returned to NEH for enforcement; or

(3) The debtor has the clear ability to pay the claim and the Government can effectively enforce payment, with due regard for the exemptions available to the debtor under state and Federal law and the judicial remedies available to the Government.

(c) NEH will consult with the Executive Office for United States Attorneys' Financial Litigation Staff at the DOJ prior to referring claims valued at less than the minimum amount.

Dated: October 27, 2021

Samuel Roth,

Attorney-Advisor, National Endowment for the Humanities.

[FR Doc. 2021-23742 Filed: 11/23/2021 8:45 am; Publication Date: 11/24/2021]